

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Wireline Competition Bureau Seeks Comment)	WC Docket No. 21-450
on the Implementation of the Affordable)	
Connectivity Program)	

COMMENTS OF DISH WIRELESS L.L.C.

I. INTRODUCTION AND SUMMARY

DISH Wireless L.L.C. (“DISH”) respectfully submits these comments¹ on how the Commission can help ensure a smooth and pro-consumer transition to the new Affordable Connectivity Program (“ACP”).² The ACP represents a significant step forward in bridging the digital divide and ensuring that all Americans have access to affordable broadband services and connected devices. As an approved Emergency Broadband Benefit (“EBB”) provider, DISH remains committed to meeting the needs of underserved populations and looks forward to modifying its EBB program offerings to incorporate new mandates under the ACP.

Several of the new mandates, such as program eligibility and program benefit amounts, go into effect in just 17 days – on December 31, 2021. This fast-approaching transition date poses significant operational challenges. DISH must reconfigure its service offerings and billing systems to fully effectuate the ACP mandates including, in particular, the requirement to apply the ACP benefit to “any internet service offering.” These changes cannot be accomplished for

¹ See FCC Public Notice, Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program, WC Docket No. 21-450, DA 21-1453 (Nov. 18, 2021)(“Public Notice”).

² The Infrastructure Investment and Jobs Act (“Infrastructure Act”), signed into law on November 15, 2021, modifies and extends the Emergency Broadband Benefit Program (“EBB”) to a long-term broadband affordability program called the Affordable Connectivity Program (“ACP”). See H.R. 3684, 117th Cong. (2021).

the general public in 17 days, nor can they be fully executed on behalf of DISH's existing EBB subscribers who benefit from a 60-day transition period.³ As these are important operational and technological requirements, DISH appreciates the Commission's invitation to comment on the feasibility of implementing these substantial changes in such a compressed time period.

The Commission can best effectuate the ACP's goals in four ways:

First, the Commission should limit application of the "any internet service offering" requirement to current service offerings and exclude legacy, grandfathered and other similarly-situated offerings.

Second, the Commission should establish a six-month safe harbor under which providers would be deemed ACP-compliant if they offer to all customers at least one ACP-supported service plan while providers implement the operational changes needed to apply the ACP benefit to all internet service offerings.

Third, the Commission should decline to impose an affirmative opt-in requirement for existing EBB subscribers because they are simply transitioning to a modified and renamed version of the program to which they already are subscribed, and an opt-in requirement will likely confuse subscribers and adversely impact enrollment.

Finally, to ensure program continuity, the Commission should permit existing EBB providers, including those that lack ETC designations, to participate in the ACP without having to file or resubmit a new application.

³ The Infrastructure Act provides a 60-day transition period for households that qualified for the EBB Program before the ACP's effective date and that would otherwise see a reduction in their benefit amount as a result of the ACP's mandates. See Infrastructure Act, div. F, tit. V, §60502(b)(1), (b)(2).

I. ONLY CURRENT OFFERINGS SHOULD BE INCLUDED IN THE REQUIREMENT THAT PROVIDERS ALLOW ELIGIBLE HOUSEHOLDS TO APPLY THE ACP BENEFIT TO ANY INTERNET SERVICE OFFERING

The ACP requires “an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider, at the same terms available to households that are not eligible households.”⁴ This requirement is significant, because the current EBB benefit does not apply to “any” internet service offering and instead applies only to offerings the provider selects, so long as the offerings existed as of December 1, 2020 and result in a discount off the standard monthly retail rate.⁵

Unconstrained, the phrase “any internet service offering” is limitless and covers even service offerings that are no longer available to all members of the public, such as legacy and grandfathered service plans. The Commission should exclude these categories of services, not only because they are not publicly available on the same terms and conditions but also because it would be impractical to develop a workable implementation solution.

II. THE COMMISSION SHOULD ESTABLISH A SIX-MONTH SAFE HARBOR BEFORE IMPOSING THE REQUIREMENT TO APPLY THE ACP BENEFIT TO “ANY INTERNET SERVICE OFFERING”

We appreciate the Commission’s affirmative request for comments on the ability of providers to implement the requirement to apply the ACP discount to any internet service offering and whether providers would be able to implement these changes by the December 31,

⁴ Infrastructure Act, div. F, tit. V, §60502(a)(3)(B)(ii).

⁵ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020), div. N, tit. IX, §904(a). *See also* Emergency Broadband Benefit Program, WC Docket No. 20-445, Order, 36 FCC Rcd 4612 (2021) (EBB Program Order) at 4647, para. 72 (noting that, under the EBB Program, providers are required to make available “at least one EBB Program-reimbursed service to each of its eligible households within its service area.”).

2021 effective date.⁶ This is a large undertaking in a minimal amount of time that impacts a provider's ability to identify and make available ACP-qualifying service offerings.

DISH, and likely many other providers, will have to reconfigure their service offerings and billing systems to apply a \$30 discount to all available internet service offerings. Some providers, particularly those that offer resold services, many need to rely upon the underlying network operators to make system and billing changes to allow resellers to offer ACP-compliant plans. These changes could take several months, and cannot be completed in 17 days when new ACP subscribers are eligible by law to subscribe to the same internet service offerings as non-ACP subscribers.

A six-month safe harbor offers a reasonable solution. Under such a safe harbor, providers would be deemed compliant if they offer at least one ACP-supported service plan that is available to all customers on uniform terms and conditions while the provider implements the requisite operational changes to make the ACP benefit uniformly available to all internet service offerings. A six-month safe harbor will maximize ACP participation, ensure program continuity, and avoid delayed provider participation due solely to the need for additional time to make billing and information technology updates.

III. THE COMMISSION SHOULD NOT IMPOSE AN AFFIRMATIVE OPT-IN REQUIREMENT FOR EXISTING EBB PROGRAM SUBSCRIBERS TO PARTICIPATE IN THE ACP

In industry guidance released on November 26, 2021, the Wireline Competition Bureau waived its original rule requiring advance customer notice of the impending EBB program termination in light of the 60-day transition period provided in the Infrastructure Act. In

⁶ Public Notice at ¶56 (seeking comment on “providers’ ability to quickly implement the Infrastructure Act’s requirement that a household may apply the benefit to any internet service offering” and suspecting that the requirement “will have a significant impact on providers . . .”).

particular, the Bureau reasoned that “[r]equiring providers to issue notices to households about the end of the EBB Program in the manner prescribed by the rules could cause alarm about a perceived loss of service, and confusion, given that EBB households will continue to receive a benefit at the EBB-level support amount for a limited 60-day period beyond the end of the EBB Program.”⁷

The same potential for consumer confusion would arise if the Commission were to require existing EBB subscribers to affirmatively opt into the ACP.⁸ Existing EBB subscribers will be confused by a notice that requires them to sign up for a modified and extended version of the same benefit program for which they are already qualified and enrolled.

Instead, consistent with other requirements the Commission proposes,⁹ providers should be required to notify their existing EBB subscribers that (i) the ACP is a modification and extension of the EBB program that similarly reduces the customer’s broadband service bill up to the maximum benefit amount for that household; (ii) the household would be subject to the undiscounted service rate and generally applicable terms and conditions upon ACP de-enrollment or termination; (iii) the benefit can be applied to any broadband service offering at the same terms available to households that are not ACP-eligible (subject to DISH’s proposed six-month safe harbor); and (iv) that subscribers may switch plans or withdraw from the program at any time.

⁷ In the Matter of Emergency Broadband Benefit Program and Affordable Connectivity Program, Order, WC Docket No. 20-445, WC Docket No. 21-450 (Nov. 26, 2021), at ¶7.

⁸ Public Notice at ¶122.

⁹ Public Notice at ¶100 (proposing certain disclosures to new ACP participants).

IV. THE COMMISSION SHOULD FIND THAT EXISTING EBB PROVIDERS, INCLUDING THOSE THAT LACK ETC DESIGNATIONS, WILL NOT NEED TO FILE OR RESUBMIT A NEW APPLICATION TO PARTICIPATE IN THE ACP

One of the ACP's goals is to make affordable broadband more accessible. Accordingly, a rule that keeps existing EBB providers in place ensures program continuity and maximizes consumer opportunity to benefit from the ACP offerings. EBB providers already must submit election notices to USAC and these submissions will ensure USAC has current, accurate information on provider capabilities, service offerings, rates, and operating territories.

V. CONCLUSION

For the reasons discussed above, DISH respectfully requests that (1) the Commission limit application of the "any internet service offering" requirement to current service offerings; (2) establish a six-month safe harbor under which providers would be deemed ACP-compliant if they offer to all customers at least one ACP-supported service plan while they work to apply the ACP benefit to all internet service offerings; (3) decline to impose an affirmative opt-in requirement for existing EBB subscribers; and (4) permit existing EBB providers, including

those that lack ETC designations, to participate in the ACP without having to file or resubmit a new application.

Respectfully submitted,

/s/

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December 8, 2021